

ATTACHMENT 2

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Central Atlantic Payphone Association,	:	
Complainant,	:	R-00973867C0001
	:	
v.	:	
	:	
Bell Atlantic - Pennsylvania, Inc.,	:	
Respondent,	:	
	:	
Pennsylvania Public Utility Commission :	:	
Complainant,	:	
	:	
v.	:	R-00974027
	:	
Bell Atlantic - Pennsylvania, Inc.	:	
Respondent,	:	

AFFIDAVIT OF DR. MARVIN H. KAHN

I, Dr. Marvin H. Kahn, submit this affidavit on behalf of the Central Atlantic Payphone Association ("CAPA"). I have reviewed the Motion to Dismiss Amended Complaint filed with the Commission by Bell Atlantic - Pennsylvania, Inc. ("Bell") on December 15, 1997 in the above referred matter. In particular, I have reviewed page 5 and Exhibits 2 and 3 of the Motion in which Bell describes and attaches a page of testimony submitted to the Public Service Commission of Maryland by staff witness Ann Dean in a proceeding before that agency. In that testimony, Ms. Dean describes an alleged conversation she had with two unidentified members of the staff of the Federal Communication Commission ("FCC") in which Ms. Dean believes she was informed that the "new services test" does not apply to a local exchange carrier's local usage rates charged to independent payphone providers. Also, attached as Exhibit "C" to Bell's motion

DSH:10672.1

is an interrogatory response from Maryland PSC staff to Peoples Telephone Company ("Peoples") a litigant in the Maryland proceeding which identified the FCC staff person referenced in the testimony as Raj Kannan and indicated that the conversation took place at a meeting of the National Association of Regulatory Commissioners.

In addition to being retained by CAPA to testify as an expert witness in this proceeding, I am also under retention to Peoples to provide testify in the Maryland PSC proceeding referenced above. In the regard, I recently spoke with Raj Kannan, the FCC staff member who was identified by the Maryland staff as the source of the information relied upon by Ms. Dean in support of her conclusion. My discussion with Mr. Kannan led me to a different conclusion from Ms. Dean on whether local usage rates that are priced identically for payphone users and business users are subject to the new services test. For a more definitive statement of the FCC position on this matter, Mr. Kannan referred me to a letter dated September 12, 1997, from the Chief of the FCC's Common Carrier Bureau to the Chair of the North Carolina Utilities Commission. The letter states:

The FCC required that all incumbent LEC payphone tariffs filed at the state level be cost-based, nondiscriminatory, and consistent with both Section 276 and the Commission's Computer III tariffing guidelines. The rates assessed by LECs for payphone services tariffed at the state level must satisfy the requirements that the Commission applies to new interstate access services proposed by incumbent LECs subject to price cap regulation (the "new services test") as demonstrated by the supporting cost documentation submitted to the individual state commissions.

A copy of this letter is attached to this Affidavit.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Central Atlantic Payphone Association,	:	
Complainant,	:	R-00973867C0001
	:	
v.	:	
	:	
Bell Atlantic - Pennsylvania, Inc.,	:	
Respondent	:	
	:	
Pennsylvania Public Utility Commission	:	
Complainant,	:	
	:	
v.	:	R-00974027
	:	
Bell Atlantic - Pennsylvania, Inc.	:	
Respondent	:	


The foregoing statement is true to the best of my knowledge and belief.



Marvin H. Kahn

State of Maryland)
) SS
County of Montgomery)

Subscribed and sworn to before me, this 29th day of December 1997.



Notary Public

Gina A. Jones, Notary Public
Montgomery County
State of Maryland
My Commission Expires May 1, 2001

320

1 Q. And I'd like you now to turn to your rebuttal
2 testimony.

3 A. I have that.

4 Q. On page 2, since it's fairly short, page 2, line
5 1, you indicate you spoke to Raj Kannan at the FCC, line
6 3? This is your rebuttal testimony page 2.

7 A. I have that.

8 Q. When did you speak with him?

9 A. I don't remember the date. Obviously, it was
10 after receiving and reading Ms. Dean's testimony.

11 Q. Where did you speak to him?

12 A. Where was I?

13 Q. Yes.

14 A. In my office.

15 Q. Was this a telephone call?

16 A. It was.

17 Q. Did anyone else participate in the call other
18 than yourself?

19 A. Mr. Aldrich was on the line.

20 Q. Did Mr. Kannan indicate that local usage in
21 Maryland should be subject to new services in any way?

22 A. Mr. Kannan expressed the view that as far as he
23 was concerned the FCC had not made a determination that it

1 should be excluded. He went --

2 Q. Can you give us his words to the extent
3 possible?

4 A. That he viewed the line as considering both the
5 loop and usage. The line element is what's made reference
6 to in the new services test and in the FCC order, and
7 that, in his view that included both the loop and usage.

8 Q. And he directed you to a case decision? Is that
9 correct?

10 A. I'm sorry.

11 Q. Did he indicate, by the way, whether, you quote
12 a section of a letter that he apparently referred you to
13 on lines 14 through 19 of your testimony.

14 A. I'm sorry, I'm missing the question.

15 Q. On page 2, you say Mr. Kannan referred me to a
16 letter.

17 A. Yes. I say that.

18 Q. Did he say, and then you've attached the letter?

19 A. That's correct.

20 Q. Now, would you take a look at the excerpt that
21 you've provided in your testimony, which is line 14
22 through 20.

23 A. Okay.

1 Q. Could you then identify for me in the attached
2 letter where that section appears?

3 MR. ALPER: Your Honor, it's the top of page 2
4 of the letter. I think Ms. Roudiez might help speed
5 things along if she assists the witness.

6 MS. ROUDIEZ: I was trying not to, would you
7 then --

8 MR. ALPER: I think Mr. Kramer and Mr. Aldrich
9 will give you the latitude that you need in order to move
10 things along.

11 HEARING EXAMINER MCGOWAN: Right.

12 THE WITNESS: I was just looking at it under the
13 assumption that the question was posed because of a
14 misquote, and I was literally verifying it word for word.

15 BY MS. ROUDIEZ:

16 Q. I'm sorry. Dr. Kahn, would you direct your
17 attention to the letter itself, it says official copy, and
18 at the bottom of the first page, there are two sentences.
19 If you could read into the record the first sentence that,
20 the third line from the bottom, in the middle of the line
21 there's a sentence that begins the FCC required.

22 A. And you would like me to read how far?

23 Q. Out loud. Just one sentence.

323

1 A. The FCC required inter alia that incumbent LECs
2 file tariffs for basic pay phone lines at the state level
3 only and that unbundled features and functions provided by
4 LECs to their own pay phone operations or others be
5 tariffed at both the state and federal levels.

6 Q. Now, is it your view then that usage is a basic
7 pay phone line? Is that your testimony today?

8 A. There is an issue with regard to usage, my
9 testimony was in response to your question dealing with my
10 conversation with the FCC staffer, and I related to you
11 the comment that the FCC staffer made to me.

12 Q. I guess then I ask you, is usage a line?

13 A. The line without any other functionality
14 associated with it is useless.

15 Q. I understand that. And would it be the case to
16 a pay phone provider --

17 A. And that to me is a basis by which use can be
18 construed as part of the line element and subject to the
19 new services test.

20 Q. Is usage a line --

21 A. The words are spelled differently. If that's
22 your question.

23 Q. Are they, I understand the words are spelled

1 differently. Are they different in terms of your cost
2 methodology as to -- not cost, as to what physical and
3 technical components create those services?

4 A. Absolutely different. Usage requires a central
5 office, a line as it's normally considered is a strand of
6 copper wire.

7 Q. Now, you mentioned that the lines use other
8 services, lines also use local messages as well as toll
9 messages, is that correct?

10 A. Yes.

11 Q. It's just a matter of distance, essentially.
12 Did you do a study on toll messages that are provided out
13 of these lines?

14 A. I did not.

15 Q. Directory assistance, would you agree that
16 directory assistance is made available on lines?

17 A. Directory assistance flows through the line made
18 available to the customer.

19 Q. Yes. Did you do an analysis of directory
20 assistance?

21 A. I did not.

22 Q. Are there other services that you are aware of
23 that are available for pay phone lines in Maryland?

SALOMON REPORTING SERVICE, INC.
Baltimore, Maryland
(410) 539-6760 FAX (410) 539-8696